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H. Stetser Murphy JR.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* H. STETSER MURPHY, JR.

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Appeal 2009-013336  
Application 10/776,848<sup>1</sup>  
Technology Center 3700

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Before WILLIAM F. PATE, III, SCOTT R. BOALICK, and  
FRED A. SILVERBERG, *Administrative Patent Judges*.

BOALICK, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>2</sup>

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<sup>1</sup> The real party in interest is the inventor, H. Stetser Murphy, Jr.

<sup>2</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

This is an appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1-21, all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part and enter a new ground of rejection.

#### STATEMENT OF THE CASE

Appellant's invention relates to a clothes hanging device in the form of an arcuate hook with a sphere for draping clothing. (Spec. Abstract.)

Claims 1, 16 and 18 are exemplary:

1. A garment hanger comprising:  
at least one generally arcuate member having a first end and at least one second end; and  
at least one generally spherical-shaped member,  
wherein said at least one generally spherical-shaped member is carried proximate to said at least one second end of said at least one generally arcuate member and said at least one generally spherical-shaped member receives and supports the garment.

16. A clothes hanging apparatus comprising:  
a plurality of hanging arms, each comprising a ball end, an arcuate shaft and a hanging end; and  
means for interconnecting said plurality of hanging arms.

18. A garment hanging device comprising:  
support frame;  
at least one extension arm, having [a] first end and [a] second end, wherein said first end is secured to said support frame; and  
at least one ball attached to said second end, wherein the garment hangs on said at least one ball.

Claims 1-4, 6, 9, 10 and 13-15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Chen (U.S. Patent 5,577,644).

Claims 18-21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Bury (U.S. Patent 2,946,493).

Claims 5, 7 and 8 stand rejected under 35 U.S.C. § 103(a) as being obvious over Chen.

Claim 11 stands rejected under 35 U.S.C. § 103(a) as being obvious over Chen (U.S. Patent 5,577,644) and Chen (U.S. Patent 6,170,721 B1)<sup>3</sup>.

Claim 12 stands rejected under 35 U.S.C. § 103(a) as being obvious over Chen and Bury (U.S. Patent 2,946,493).

Claims 16 and 17 stand rejected under 35 U.S.C. § 103(a) as being obvious over Chen and Lehmann (U.S. Patent 4,872,568).

## ISSUES

### *§ 102 Rejections*

With respect to independent claim 1, Appellant argues that Chen does not teach “at least one generally spherical-shaped member [that] receives and supports the garment.” (App. Br. 6-7.)

With respect to dependent claim 4, Appellant argues that Chen does not teach “wherein said hanger is formed from a moldable material.” (App. Br. 7.)

With respect to independent claim 13, Appellant argues that Chen does not teach all the features of this claim. (App. Br. 8.)

With respect to independent claim 15, Appellant argues that Chen does not teach “positioning a garment over and substantially covering the surface of said ball-shaped support for retention thereby.” (App. Br. 9.)

With respect to independent claim 18, Appellant argues that Bury does not teach “at least one extension arm, having [a] first end and [a] second end, wherein said first end is secured to said support frame . . . at least one ball attached to said second end.” (App. Br. 10.)

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<sup>3</sup> All remaining citations to “Chen” refer to U.S. Patent 5,577,644.

With respect to dependent claim 19, Appellant argues that Bury does not teach “said at least one extension arm comprises at least one upper extension arm and at least one lower extension arm.” (App. Br. 10.)

Appellant’s responses to the Examiner’s stated positions present the following issues:

1. Has the Examiner erred in finding that Chen teaches “at least one generally spherical-shaped member [that] receives and supports the garment,” as recited in claim 1?
2. Has the Examiner erred in finding that Chen teaches “wherein said hanger is formed from a moldable material,” as recited in claim 4?
3. Has the Examiner erred in finding that Chen teaches “obtaining an arcuate hanger having . . . a ball-shaped support” and “hanging an object on said ball-shaped support of said arcuate hanger,” as recited in claim 13?
4. Has the Examiner erred in finding that Chen teaches “positioning a garment over and substantially covering the surface of said ball-shaped support for retention thereby,” as recited in claim 15?
5. Has the Examiner erred in finding that Bury teaches “at least one extension arm, having [a] first end and [a] second end, wherein said first end is secured to said support frame . . . at least one ball attached to said second end,” as recited in claim 18?
6. Has the Examiner erred in finding that Bury teaches “said at least one extension arm comprises at least one upper extension arm and at least one lower extension arm,” as recited in claim 19?

#### *§ 103 Rejections*

With respect to dependent claim 5, Appellant argues that Chen does not teach or suggest “wherein said at least one generally arcuate member and

said at least one generally spherical-shaped member are integrally molded.”  
(App. Br. 12.)

With respect to dependent claims 7 and 8, Appellant argues that Chen does not teach or suggest the features of these claims. (App. Br. 13.)

With respect to dependent claim 12, Appellant argues that the combination of Chen and Bury does not teach or suggest “wherein said arcuate hook shape has at least one generally hemispherical indent.” (App. Br. 14.)

With respect to independent claim 16, Appellant argues that the combination of Chen and Lehmann does not teach or suggest “a plurality of hanging arms, each comprising a ball end, arcuate shaft and hanging end.” (App. Br. 15.)

Appellant’s responses to the Examiner’s stated positions present the following issues:

7. Has the Examiner erred in finding that Chen teaches or suggests “wherein said at least one generally arcuate member and said at least one generally spherical-shaped member are integrally molded,” as recited in claim 5?

8. Has the Examiner erred in finding that Chen teaches or suggests “wherein said at least one generally spherical-shaped member comprises a material selected from the group consisting of plastics and elastomers,” as recited in claim 7?

9. Has the Examiner erred in finding that Chen teaches or suggests “wherein said material comprises expanded polystyrene,” as recited in claim 8?

10. Has the Examiner erred in finding that the combination of Chen and Bury teaches or suggests “wherein said arcuate hook shape has at least one generally hemispherical indent,” as recited in claim 12?

11. Has the Examiner erred in finding that the combination of Chen and Lehmann teaches or suggests “a plurality of hanging arms, each comprising a ball end, an arcuate shaft and a hanging end,” as recited in claim 16?

### FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

#### *Chen*

1. Chen describes a “hanger assembly covered with a toy doll.” (Col. 1, ll. 7-8; fig. 1.) The hanger assembly includes a rod member 10 attached to a hanger 50 and a swivel hook 60, in which a toy doll 20 covers the rod member 10. (Col. 2, ll. 33-37; fig. 1.) The toy doll 20 is covered with a skin 21 (col. 2, ll. 48-49). Figures 1 and 3 illustrate that the head of the toy doll 20 has a spherical shape with the exception of minor deviations in the form of a pair of ears and a nose. Figures 1 and 3 also illustrate that the toy doll 20 includes a top hemispherical surface surrounding the swivel hook 60. Figure 7 illustrates that the hanger 50 is used for holding a skirt. (Col. 3, ll. 20-22.) Chen provides no express disclosure of the material composition or method of manufacturing the hanger assembly.

*Bury*

2. Bury relates to garment hangers (col. 1, l. 15; fig. 1) for horizontal suspension (col. 1, ll. 67-68). The garment hanger includes a bar 10 (col. 1, ll. 61-63) with end portions 12 and 14 (col. 2, ll. 10-11) and a center portion 16 (col. 2, ll. 15-16). Projections 22 and 24 are secured to the ends of the bar 10. (Col. 2, ll. 19-20, 25-26; fig. 4.) A screw hook 32 is secured to the center portion 16 with a screw 34. (Col. 2, ll. 28-34.)

*Lehmann*

3. Lehmann relates to a “device . . . used to suspend coat hangers or the like in order to expand the storage capacity of a closet.” (Abstract.) A coat hanger suspending device 1 includes a unitary elongated member 2 and multiple open hook members 6 to suspend the device 1 from a closet pole 3. (Col. 2, ll. 39-45; fig. 1.) The elongated member 2 includes a plurality of openings 4 spaced along the length of the elongated member 2 and sized to receive a hook end of a conventional wire clothing hanger 8. (Col. 2, ll. 58-63.)

*Specification*

4. Appellant’s Specification describes an apparatus 10 with a hook portion 40 including a shaped portion 80 that “causes apparatus 10 to hang facing forward on the small rod that is integral with modern wire closet shelving.” (Spec. 8:17-21; figs. 1A, 1B.) Figures 1A and 1B illustrate that the shaped portion 80 is a partially cylindrical indent, formed in the swivel hook 60.



## ANALYSIS

### *§ 102 Rejections*

#### Claims 1-3, 6, 9 and 10

With respect to the first issue, we are not convinced by Appellant's arguments (App. Br. 6-7; *see also* Reply Br. 4-6) that Chen does not teach "at least one generally spherical-shaped member [that] receives and supports the garment," as recited in claim 1.

The Examiner found that Chen teaches all the features of claim 1. (Ans. 3; FF 1.) In particular, the Examiner found that the toy doll 20 of Chen corresponds to the limitation "at least one generally spherical-shaped member" and interpreted the feature "receives and supports the garment" to be a functional limitation. (Ans. 3.)

Under the broadest reasonable interpretation, we agree with the Examiner that Chen teaches the limitation "at least one generally spherical-shaped member." The claim term "generally" is broad. One relevant plain meaning of "generally" is "for the most part" or "usually." *Random House Dictionary of the English Language* 795 (2d ed. 1987). Under that construction, Chen meets the disputed limitation because the toy doll 20 of Chen is spherical "for the most part" or "usually" spherical. (*See* FF 1.) In particular, the toy doll 20 may be characterized as generally spherical because the doll's head has a spherical shape with the exception of minor deviations in the form of a pair of ears and a nose. (*See* FF 1.) Thus, we find that the Examiner's construction of "generally spherical-shaped" to be reasonable. Appellant has not pointed to any special definition of "generally spherical-shaped" in the Specification that would require a different interpretation.

We also agree with the Examiner that the claim language “receives and supports the garment” is a functional limitation and defines the “generally spherical-shaped member” by what it does, rather than by its structure. *See In re Schreiber*, 128 F.3d 1473, 1478 (Fed. Cir. 1997). Thus, the “generally spherical-shaped member” must have the ability to “receive[] and support[] the garment.” Chen teaches that the toy doll 20 includes a top hemispherical surface surrounding the swivel hook 60 (FF 1) that is capable of receiving and supporting a garment (*see* FF 1). While Appellant argues that the toy doll 20 of Chen is not “a round body whose surface is ‘at all points equidistant from the center’” (Reply Br. 4) or “sufficient in diameter and texture such that clothing draped upon it will remain in place and will not be deformed in shape” (Reply Br. 5), these features are not claimed.

Therefore, the Examiner has not erred in finding that Chen teaches “at least one generally spherical-shaped member [that] receives and supports the garment,” as recited in claim 1.

We conclude that the Examiner has not erred in rejecting claim 1 under 35 U.S.C. § 102(b). Because Appellant has not presented separate arguments regarding claims 2, 3, 6, 9 and 10, we affirm the rejection of these claims for the same reasons as for claim 1, from which they depend.

#### Claim 4

With respect to the second issue, we are convinced by Appellant’s arguments (App. Br. 7-8; *see also* Reply Br. 6) that Chen does not teach “wherein said hanger is formed from a moldable material,” as recited in dependent claim 4.

The Examiner found that Chen teaches the limitation “wherein said hanger is formed from a moldable material” because “all materials including plastics, metals, etc[.] are moldable.” (Ans. 3.) We do not agree.

Chen simply provides no express or inherent disclosure regarding the material composition or method of manufacturing the rod member 10, the hanger 50, the swivel hook 60 and the toy doll 20, which is covered with a skin 21. (FF 1.) As such, it becomes incumbent upon the Examiner to provide a basis in fact and/or technical reasoning that would support a finding that Chen’s hanger is, in fact, “formed from a moldable material,” as recited in claim 4.

We find that although it is certainly possible that Chen’s hanger could be formed from a moldable material, it is also possible that Chen’s hanger could be formed from a non-moldable material. Accordingly, we find that the Examiner’s finding is merely a conclusory statement. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”).

Therefore, the Examiner has erred in finding that Chen teaches “wherein said hanger is formed from a moldable material,” as recited in claim 4. We conclude that the Examiner has erred in rejecting claim 4 under 35 U.S.C. § 102(b).

#### Claims 13 and 14

With respect to the third issue, we are not convinced by Appellant’s arguments (App. Br. 8; *see also* Reply Br. 7) that Chen does not teach “obtaining an arcuate hanger having . . . a ball-shaped support” and “hanging

an object on said ball-shaped support of said arcuate hanger,” as recited in independent claim 13.

The Examiner found that Chen teaches all the features of independent claim 13. (Ans. 3.) In particular, the Examiner found that “Chen . . . inherently teaches the method of using such a hanger.” (Ans. 3.) We agree with the Examiner.

Appellant argues that Chen “do[es] NOT involve obtaining a hanger with a ball-shaped support and do[es] NOT involve hanging an object on said ball-shaped support.” (App. Br. 8.) As discussed previously with respect to claim 1, Chen teaches a generally spherical-shaped (i.e., ball-shaped) member that receives and supports a garment. Chen also teaches that a swivel hook 60 and a hanger 50 are attached to a rod member 10 that is covered by a toy doll 20. (FF 1.) In other words, Chen teaches that the hanger 50 is attached to the toy doll 20, where the toy doll 20 receives and supports the garment. Thus, Chen teaches “hanging an object on said ball-shaped support.”

Therefore, the Examiner has not erred in finding that Chen teaches “obtaining an arcuate hanger having . . . a ball-shaped support” and “hanging an object on said ball-shaped support of said arcuate hanger,” as recited in claim 13.

We conclude that the Examiner has not erred in rejecting claim 13 under 35 U.S.C. § 102(b). Because Appellant has not presented separate arguments regarding claim 14, we affirm the rejection of this claim for the same reasons as for claim 13, from which it depends.

Claim 15

With respect to the fourth issue, we are convinced by Appellant's arguments (App. Br. 9; *see also* Reply Br. 7) that Chen does not teach "positioning a garment over and substantially covering the surface of said ball-shaped support for retention thereby," as recited in dependent claim 15.

The Examiner found that Chen inherently teaches the limitation "positioning a garment over and substantially covering the surface of said ball-shaped support for retention thereby." (Ans. 3.) We do not agree.

Chen teaches that the hanger 50 of the hanger assembly is used for holding garments. (FF 1.) However, Chen provides no express or inherent disclosure of positioning a garment over and *substantially* covering the surface of the toy doll 20. Although it is certainly possible that a garment could substantially cover the surface of the toy doll 20, the Examiner has not shown that it necessarily does so.

Therefore, the Examiner has erred in finding that Chen inherently teaches "positioning a garment over and substantially covering the surface of said ball-shaped support for retention thereby," as recited in dependent claim 15. We conclude that the Examiner has erred in rejecting claim 15 under 35 U.S.C. § 102(b).

Claims 18 and 21

With respect to the fifth issue, we are not convinced by Appellant's arguments (App. Br. 9-10; *see also* Reply Br. 7-8) that Bury does not teach "at least one extension arm, having [a] first end and [a] second end, wherein said first end is secured to said support frame . . . and at least one ball attached to said second end," as recited in claim 18.

The Examiner found that Bury teaches all the limitations of independent claim 18. (Ans. 3-4.) In particular, the Examiner found that the screw hook 32 of Bury corresponds to the claimed “support frame” (Ans. 6), the end portion 14 corresponds to the claimed “at least one extension arm” (Ans. 3) and that the projection 22 corresponds to the claimed “one ball” (Ans. 4). We agree with the Examiner.

Appellant argues that “*Bury* . . . has a two-ended extension arm, CENTRALLY secured to a support hanger, with each of the two extended ends carrying a ball.” (App. Br. 10.) However, Bury teaches that a central portion 16 (i.e., “first end”) of a garment hanger bar 10 is secured to a screw hook 32 (i.e., “support frame”) in which a projection 22 (i.e., “one ball”) is mounted to an end of the bar 10 (i.e., “second end”). (FF 2.) In other words, Bury teaches “at least one extension arm, having [a] first end and [a] second end, wherein said first end is secured to said support frame . . . and at least one ball attached to said second end.”

Therefore, the Examiner has not erred in finding that Bury teaches “at least one extension arm, having [a] first end and [a] second end, wherein said first end is secured to said support frame . . . and at least one ball attached to said second end,” as recited in claim 18.

We conclude that the Examiner has not erred in rejecting claim 18 under 35 U.S.C. § 102(b). Because Appellant has not presented separate arguments regarding claim 21, we affirm the rejection of this claim for the same reasons as for claim 18, from which it depends.

#### Claims 19 and 20

With respect to the sixth issue, we are convinced by Appellant’s arguments (App. Br. 10-11; *see also* Reply Br. 8-9) that Bury does not teach

“said at least one extension arm comprises at least one upper extension arm and at least one lower extension arm,” as recited in claim 19.

The Examiner found that the end portions 12 and 14 of Bury correspond to the “upper extension arm” and the “one lower extension arm,” respectively. (Ans. 7.) We do not agree.

We construe the claim terms “upper” and “lower” as relating to relative vertical heights of the two extension arms. Bury teaches a garment hanger for horizontal suspension, including a bar 10 with end portions 12 and 14. (FF 2.) Because Bury teaches that the end portions 12 and 14 are at the same relative height (*see* FF 2), we find it unreasonable to interpret one end portion of Bury as the “upper extension arm” and the other end portion as the “one lower extension arm.”

Therefore, the Examiner has erred in finding that Bury teaches “said at least one extension arm comprises at least one upper extension arm and at least one lower extension arm,” as recited in claim 19.

We conclude that the Examiner has erred in rejecting claim 19 under 35 U.S.C. § 102(b). Claim 20 depends from claim 19, and we likewise conclude that the Examiner has erred in rejecting this claim, for the reasons discussed with respect to claim 19.

### *§ 103 Rejections*

#### Claim 5

With respect to the seventh issue, we are not convinced by Appellant’s arguments (App. Br. 12; *see also* Reply Br. 9) that Chen does not teach or suggest “wherein said at least one generally arcuate member and said at least one generally spherical-shaped member are integrally molded,” as recited in dependent claim 5.

Chen teaches that a hanger assembly, including a swivel hook 60 attached to a toy doll 20, is a known structure. (*See* FF 1.) Integrally molding multiple separate components is also a known manufacturing method. Thus, modifying Chen to integrally mold the swivel hook 60 and the toy doll 20 is nothing more than the combination of known elements according to known methods (i.e., manufacturing the known hanger assembly of Chen using a known manufacturing method) to yield predictable results. *See KSR*, 550 U.S. at 416.

Therefore, the Examiner has not erred in finding that Chen teaches or suggests “wherein said at least one generally arcuate member and said at least one generally spherical-shaped member are integrally molded,” as recited in claim 5. We conclude that the Examiner has not erred in rejecting claim 5 under 35 U.S.C. § 103(a).

#### Claims 7 and 8

With respect to the eighth and ninth issues, we are not convinced by Appellant’s argument (App. Br. 12-13; *see also* Reply Br. 9) that Chen does not teach or suggest “wherein said at least one generally spherical-shaped member comprises a material selected from the group consisting of plastics and elastomers” and “wherein said material comprises expanded polystyrene,” as recited in dependent claims 7 and 8, respectively.

Chen teaches that a hanger assembly, including a toy doll 20, is a known structure. (*See* FF 1.) Plastics and elastomers, including expanded polystyrene, are known materials. Thus, modifying Chen to form the toy doll 20 from plastics, elastomers or expanded polystyrene is nothing more than the combination of known elements according to known methods (i.e.,



manufacturing the known hanger assembly of Chen using a known material) to yield predictable results. *See KSR*, 550 U.S. at 416.

Therefore, the Examiner has not erred in finding that Chen teaches or suggests “wherein said at least one generally spherical-shaped member comprises a material selected from the group consisting of plastics and elastomers” and “wherein said material comprises expanded polystyrene,” as recited in claims 7 and 8, respectively. We conclude that the Examiner has not erred in rejecting claims 7 and 8 under 35 U.S.C. § 103(a).

#### Claim 11

Although Appellant nominally argues the rejection of dependent claim 11 separately (App. Br. 13-14), the arguments presented do not point out with particularity or explain why the limitations of this dependent claim are separately patentable. Instead, Appellant merely reiterates the arguments previously presented with respect to claim 1 and summarily alleges that “dependent Claim 11 [indirectly] . . . depends from Claim 1, [and] contrary to [the] Examiner’s assertion, Chen . . . does not teach Applicant’s device.” (App. Br. 13-14.) Therefore, we will sustain the rejection of claim 11, for the reasons discussed with respect to independent claim 1, from which claim 11 ultimately depends.

#### Claim 12

With respect to the tenth issue, we do not reach the merits of the Examiner’s rejection of claim 12 under 35 U.S.C. § 103(a). Rather, we reverse *pro forma* the outstanding rejection under 35 U.S.C. § 103(a) because, as will be discussed in the new ground of rejection, claim 12 fails to satisfy the requirements of 35 U.S.C. § 112, second paragraph.

Before a proper review of the prior art rejections can be performed, the subject matter encompassed by the claims on appeal must be reasonably understood without resort to speculation. *See In re Steele*, 305 F.2d 859, 862 (CCPA 1962) (A prior art rejection cannot be sustained if the hypothetical person of ordinary skill in the art would have to make speculative assumptions concerning the meaning of claim language.); *see also In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970) (“If no reasonably definite meaning can be ascribed to certain terms in the claim, the subject matter does not become obvious-the claim becomes indefinite.”). Presently, speculation and conjecture must be utilized by us and by the artisan inasmuch as claim 12 on appeal does not adequately reflect what the disclosed invention is under the second paragraph of 35 U.S.C. § 112.

#### Claim 16

With respect to the eleventh issue, we are not convinced by Appellant’s arguments (App. Br. 14-15; *see also* Reply Br. 10-11) that the combination of Chen and Lehmann does not teach or suggest “a plurality of hanging arms, each comprising a ball end, an arcuate shaft and a hanging end,” as recited in claim 16.

The Examiner acknowledged that Chen does not teach or suggest a “means for interconnecting said plurality of hanging arms” (Ans. 5) and cited Lehmann for the disclosure of an elongated member 2 with multiple openings 4 to receive conventional wire clothing hangers 8 (Ans. 5; FF 3). The Examiner concluded that claim 16 would have been obvious over the combination of Bury and Lehmann. (Ans. 5.) We agree with the Examiner.

Chen relates to a toy doll 20 hanger assembly including a swivel hook 60 and a hanger 50. (FF 1.) Lehmann relates to a hanger suspending

device 1 including an elongated member 2 with a plurality of openings 4 to receive conventional wire clothing hangers 8. (FF 3.) Combining Chen and Lehmann is no more than the simple substitution of the toy doll 20 hanger assemblies of Chen for the conventional wire clothing hangers 8 of Lehmann to be placed in the elongated member 2 of Lehmann containing multiple openings 4, with no unexpected results. *See KSR*, 550 U.S. at 417.

Appellant has not presented any convincing arguments or evidence that the Examiner erred in combining Chen with Lehmann.

Appellant argues that the combination of Chen and Lehmann does not disclose a “plurality of hanging arms, each comprising a ball end, arcuate shaft and hanging end” because “Chen . . . is a singular hanger with a toy attached, and is not configured in a manner that could even lend itself to a means for interconnecting” while “Lehmann . . . is nothing more than a hanging strip with apertures that are capable of receiving any type of hanging device.” (App. Br. 15.) This argument is not persuasive because substituting the toy doll 20 hanger assemblies of Chen for the conventional wire clothing hangers 8 of Lehmann in the elongated member 2 of Lehmann would result in the placement of the toy doll 20 hanger assembly of Chen in each of the multiple openings 4 in the elongated member 2 of Lehmann.

Therefore, the Examiner has not erred in finding the combination of Chen and Lehmann teaches or suggests “a plurality of hanging arms, each comprising a ball end, an arcuate shaft and a hanging end,” as recited in claim 16. We conclude that the Examiner has not erred in rejecting claim 16 under 35 U.S.C. § 103(a).

Claim 17

Although Appellant nominally argues the rejection of dependent claim 17 separately (App. Br. 15-16), the arguments presented do not point out with particularity or explain why the limitations of this dependent claim are separately patentable. Instead, Appellant merely reiterates the arguments previously presented with respect to claim 16 and summarily alleges that “the arguments made above with respect to claim 16 also apply to the rejection of claim 17.” (App. Br. 15-16.) Therefore, we will sustain the rejection of claim 17 for the reasons discussed with respect to independent claim 16, from which claim 17 depends.

NEW GROUND OF REJECTION UNDER 37 C.F.R. § 41.50(b)

We make the following new ground of rejection using our authority under 37 C.F.R. § 41.50(b).

*35 U.S.C. § 112, Second Paragraph*

Claim 12 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 recites “wherein said arcuate hook shape has at least one generally *hemispherical indent* therein” (emphasis added). Appellant’s Specification describes an apparatus 10 with a hook portion 40 including a shaped portion 80. (FF 4.) Figures 1A and 1B illustrate the shaped portion 80 as a partially *cylindrical indent* (FF 4), rather than a “hemispherical indent,” as recited in claim 12. This inconsistency between claim 12 and Figures 1A and 1B renders the claim indefinite. *See In re Cohen*, 438 F.2d 989, 993 (CCPA 1971).

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b).

37 C.F.R. § 41.50(b) provides that a “new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

37 C.F.R. § 41.50(b) also provides that the Appellant, *WITHIN TWO MONTHS FROM THE DATE OF THE DECISION*, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of proceedings (37 C.F.R. § 1.197 (b)) as to the rejected claims:

- (1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner . . . .
- (2) Request rehearing. Request that the proceeding be reheard under 37 C.F.R. § 41.52 by the Board upon the same record . . . .

#### CONCLUSION

Based on the findings of fact and analysis above, we conclude that:

- (1) The Examiner has erred in rejecting claims 4, 15, 19 and 20 under 35 U.S.C. § 102(b);
- (2) The Examiner has not erred in rejecting claims 1-3, 6, 9, 10, 13, 14, 18 and 21 under 35 U.S.C. § 102(b);
- (3) The Examiner has not erred in rejecting claims 5, 7, 8, 11, 16 and 17 under 35 U.S.C. § 103(a);
- (4) Claim 12 is unpatentable under 35 U.S.C. § 112, second paragraph because it is indefinite.

#### DECISION

The rejection of claims 4, 15, 19 and 20 under 35 U.S.C. § 102(b) is reversed.

Appeal 2009-013336  
Application 10/776,848

The rejection of claims 1-3, 6, 9, 10, 13, 14, 18 and 21 under 35 U.S.C. § 102(b) is affirmed.

The rejection of claims 5, 7, 8, 11, 16 and 17 under 35 U.S.C. § 103(a) is affirmed.

The rejection of claim 12 under 35 U.S.C. § 103(a) is reversed.

Claim 12 is rejected under 35 U.S.C. § 112, second paragraph as being indefinite.

A new ground of rejection has been entered under 37 C.F.R. § 41.50(b).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART  
37 C.F.R. § 41.50(b)

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